

**EXHIBIT D**

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SUPERIOR COURT OF CALIFORNIA  
SANTA CLARA COUNTY

**Antoinette Powell, (See additional  
parties list with plaintiffs attached)**

Plaintiffs,

v.

**23ANDME, INC.,**

Defendant.

Case No. 24CV448695

**COMPLAINT FOR CIVIL  
DAMAGES AND INJUNCTIVE  
RELIEF**

- 1. Illinois Genetic Information Privacy Act**
- 2. Negligence**
- 3. Breach Of Actual and Implied Contract**
- 4. Invasion Of Privacy – Intrusion Upon Seclusion**
- 5. Unjust Enrichment**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Antoinette Powell (Attachment 1) and each of them, individually (hereinafter “Plaintiffs”) allege against Defendant 23andMe, Inc. (“23andMe” or “Defendant”) as follows:

**SUMMARY:**

1. Defendant is a genomic and biotechnology company that looks at an individual's genome for the purpose of creating unique, personalized genetic reports on ancestral origins, personal genetic health risks, chances of passing on carrier conditions, and pharmacogenetics.<sup>1</sup>
2. To take advantage of Defendant's services, customers had to provide sensitive personal, genetic, and biological information. To gain the trust of potential customers Defendant expressly advertised the importance of security as "Privacy is in our DNA".
3. On or about October 6, 2023, Defendant announced, via their website, that unauthorized threat actors had accessed 23andMe accounts and compiled customer profile information (the "Data Breach").<sup>2</sup>
4. The Data Breach contained millions of individuals' private identifying information (hereinafter "PII"), including, but not limited to: names, sex, date of birth, usernames, genetic ancestry, profile photos, geographical locations, living biological relatives, and data about individuals' ethnicity.
5. Plaintiffs are customers of 23andMe that were victims of the Data Breach. Due to the Data Breach, Plaintiffs' PII was released, stolen, and offered for sale on the dark web.
6. Defendant had a non-delegable duty and responsibility to implement and maintain reasonable security measures to secure, safeguard, and protect the private information that it collected, stored, and maintained for Plaintiffs.
7. Defendant disregarded the rights of Plaintiffs by intentionally, willfully, recklessly, or negligently failing to implement adequate and reasonable measures to ensure that Plaintiffs' PII was safeguarded, failing to take all available steps to prevent unauthorized disclosure of data, and failing to follow applicable, and appropriate protocols, policies, and procedures regarding the encryption of data. The Data Breach

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<sup>1</sup> <https://www.23andme.com/#> (last visited January 9, 2024).

<sup>2</sup> <https://blog.23andme.com/articles/addressing-data-security-concerns>

1 was a direct result of Defendant's failure to implement adequate and reasonable  
2 cyber-security procedures and protocols necessary to protect victims' PII.

3 8. As a result of Defendant's failure to implement adequate data security measures,  
4 Plaintiffs have suffered actual harm in the disclosure of their PII to unknown and  
5 unauthorized third parties. Plaintiffs have suffered injury and ascertainable losses in  
6 the form of the present and imminent threat of fraud and identity theft, loss of the  
7 benefit of their bargain, out-of-pocket expenses, loss of value of their time reasonably  
8 incurred to remedy or mitigate the effects of the attack, and the loss of, and diminution  
9 in, value of their PII. Plaintiffs also remain vulnerable to future cyberattacks and  
10 thefts from the data in Defendant's possession.

11 9. As such, Plaintiffs assert claims for Illinois Genetic Information Privacy Act (GIPA),  
12 410 ILCS 513 *et seq.*; negligence, breach of implied contract, invasion of privacy,  
13 and unjust enrichment.

14 **JURISDICTION AND VENUE:**

15 10. This Court has subject matter jurisdiction over this action pursuant to Article VI,  
16 section 10 of the California Constitution and Code of Civil Procedure section 410.10

17 11. This Court has personal jurisdiction over Defendant because it is headquartered in  
18 the State of California, county of Santa Clara, and purposefully avails itself of the  
19 laws, protections, and advantages of this State.

20 12. Venue is proper in this Court because Defendant conducts business in this County  
21 and reaped substantial profits from customers in this County. In addition, in its own  
22 Terms of Service, Defendant has agreed "...to submit to the exclusive jurisdiction of  
23 any state or federal court located in Santa Clara County, California (except for small  
24 claims court actions which may be brought in the county where you reside), and  
25 waive any jurisdictional, venue, or inconvenient forum objections to such courts."  
26 Finally, a substantial part of the acts and conduct charged herein occurred in this  
27 County.  
28

**PARTIES:**

13. Plaintiffs are residents of Illinois who provided 23andMe with a DNA sample for analysis and whose private identifying information was compromised by the Data Breach.

**FACTUAL ALLEGATIONS:*****Defendant collected and stored Plaintiffs' PII***

14. Defendant collects PII from their customers in the course of doing business.
15. As a condition of receiving Defendant's services, Plaintiffs were required to entrust Defendant with highly sensitive genetic information, information derived from genetic testing, health information, ancestral origin, and other confidential and sensitive PII. 23andMe then stores that information in its platform.
16. According to the Privacy Statement on 23andMe's website, the company collects the following categories of customer information:
- a) Registration Information, including name, user ID, password, date of birth, billing address, shipping address, payment information, account authentication information, and contact information (such as email address and phone number).
  - b) Genetic information, including "[i]nformation regarding your genotype (e.g., the As, Ts, Cs, and Gs at particular locations in your DNA)" and "the 23andMe genetic data and reports provided to you as part of our Services."
  - c) Sample Information, including "[i]nformation regarding any sample, such as a saliva sample, that you submit for processing to be analyzed to provide you with Genetic Information, laboratory values or other data provided through our Services."
  - d) Self-Reported Information, including "gender, disease conditions, health related information, traits, ethnicity, family history, or anything else you want to provide to us within our Service(s)."
  - e) User Content, including "[i]nformation, data, text, software, music, audio,

photographs, graphics, video, messages, or other materials, other than Genetic Information and Self-Reported Information, generated by users of 23andMe Services and transmitted, whether publicly or privately, to or through 23andMe. For example, User Content includes comments posted on our Blog or messages you send through our Services.”

f) Web-Behavior Information, including “[i]nformation on how you use our Services or about the way your devices use our Services is collected through log files, cookies, web beacons, and similar technologies (e.g., device information, device identifiers, IP address, browser type, location, domains, page views).”

g) Biometric Information, including “[c]ertain Self-Reported Information you provide to us or our service providers to verify your identity using biological characteristics.”

17. As part of its advertising, Defendant promises to maintain the confidentiality of Plaintiffs’ PII to ensure compliance with federal and state laws and regulations, and not to use or disclose Plaintiffs’ PII for non-essential purposes.

18. Defendant’s Privacy Policy states that it “encrypt[s] all sensitive information and conduct[s] regular assessments to identify security vulnerabilities and threats.”<sup>3</sup>

19. By obtaining, collecting, using, and deriving a benefit from Plaintiffs’ PII, Defendant assumed legal and equitable duties and knew or should have known that it was responsible for protecting Plaintiffs’ PII from unauthorized disclosure.

20. Additionally, Defendant had and continues to have obligations created by applicable state law, reasonable industry standards, common law, and its own assurances and representations to keep Plaintiffs’ PII confidential and to protect such PII from unauthorized access.

21. Defendant created the reasonable expectation and mutual understanding with Plaintiffs that it would comply with its obligations to Plaintiffs’ information, including the PII, confidential and secure from unauthorized access.

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<sup>3</sup> <https://www.23andme.com/privacy/>

22. Plaintiffs have the utmost privacy interest in the highly sensitive nature of PII, and would not have been induced to purchase the genetic testing offered by Defendant had Defendant not included privacy assurances within its advertising.

23. Plaintiffs took reasonable steps to maintain the confidentiality of their PII and relied on Defendant to keep their PII confidential and securely maintained, to use this information for business purposes only, and to make only authorized disclosures of this information.

### ***Data Breach***

24. On October 6, 2023, Defendant revealed that threat actors were able to access customer accounts and obtain customers' PII without authorization and consent.

25. Despite the prevalence of public announcements of data breach and data security compromises in recent years, Defendant failed to take sufficient steps to protect Plaintiffs' PII from being compromised.

26. Upon information and belief, Defendant did not require two-factor authentication to protect Plaintiffs' PII at the time of the Data Breach.

27. Upon information and belief, Defendant did not adequately monitor, secure, and/or encrypt its servers and Plaintiffs' PII.

28. Upon information and belief, Defendant could have prevented the Data Breach.

29. Upon information and belief, the cyberattack was expressly designed to gain access to private and confidential data, including Plaintiffs' PII.

30. Due to Defendant's inadequate security measures, Plaintiffs now face a present, immediate, and ongoing risk of fraud and identity theft and must deal with that threat indefinitely.

### ***Defendant failed to adequately protect the PII and failed to timely notify Plaintiffs their data had been compromised***

31. On November 6, 2023—one month after it disclosed the breach—23andMe announced that it was “requiring all customers use a second step of verification to

1 sign into their account.”

2 32. On information and belief, Defendant did not begin notifying Plaintiffs their specific  
3 PII had been compromised until on or after December 1, 2023.

4 33. On information and belief, Defendant continues to fail to take reasonable and  
5 adequate measure to notify all impacted customers that their PII has been  
6 compromised.

7 34. At all relevant times, Defendant had a duty to exercise reasonable care in obtaining,  
8 retaining, securing, safeguarding, deleting, and protecting the PII in Defendant’s  
9 possession from being compromised, lost, stolen, accessed, and misused by  
10 unauthorized persons.

11 35. At all relevant times, Defendant had a duty to properly secure the collected PII,  
12 encrypt and maintain such information using industry standard methods, create and  
13 implement reasonable data security practices and procedures, train its employees,  
14 utilize available technology to defend its systems from invasion, act reasonably to  
15 prevent foreseeable harm to Plaintiffs, and to promptly notify Plaintiffs when  
16 Defendant became aware that Plaintiffs’ PII may have been compromised.

17 36. Defendant touted its security and privacy as part of their advertising. Defendant’s  
18 duty to use reasonable security measures arose as a result of the Plaintiffs’ reasonable  
19 reliance on Defendant to secure their highly sensitive personal data. Plaintiffs  
20 surrendered the data to obtain Defendant’s services under the express condition that  
21 Defendant would keep it private and secure. Accordingly, Defendant also has a duty  
22 to safeguard their data, independent of any statute.

23 37. Defendant owed a duty of care to Plaintiffs because they were foreseeable and  
24 probable victims of any inadequate data security practices.

25  
26 ***Value of the PII***

27 38. PII are highly valuable for identity thieves and personal information is sold on several  
28



underground internet websites for \$40 to \$200<sup>4</sup> per identity.

39. Identity thieves can use PII, such as that of Plaintiffs to perpetrate a variety of crimes such as immigration fraud, obtaining a driver's license or identification card in the victim's name but with another's picture, using the victim's information to obtain government benefits, or filing a fraudulent tax return using the victim's information to obtain a fraudulent refund.

40. Criminals can also use stolen PII to extort a financial payment by leveraging sensitive healthcare information, for example a sexually transmitted disease or terminal illness, to extort or coerce the victim.

41. Familial relationships and ethnic background can be used to target certain minority groups with threats or even violence.

42. Data breaches involving medical information are more difficult to detect, and take longer to uncover, than normal identity theft. In warning consumers on the dangers of medical identity theft, the FTC states that an identity thief can use private information "to see a doctor, get prescription drugs, buy medical devices, submit claims with your insurance provider, or get other medical care."<sup>5</sup> The FTC also warns that if a thief's health information is mixed with the victim's it "could affect the medical care [they are] able to get or the health insurance benefits [they are] able to use."<sup>6</sup>

43. Defendant is a large, sophisticated organization with the resources to deploy robust cybersecurity protocols. It knew, or should have known, that the development and use of such protocols were necessary to fulfill its statutory and common law duties to Plaintiffs. It knew, or should have known, that PII is sought after and valuable target for thieves and that there was a high likelihood this information would be targeted.

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<sup>4</sup> Anita George, DIGITAL TRENDS, Your personal data is for sale on the dark web. Here's how much it costs (Oct. 16, 2019), <https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/>

<sup>5</sup> See What to Know About Medical Identity Theft, FEDERAL TRADE COMMISSION CONSUMER INFORMATION, <https://www.consumer.ftc.gov/articles/what-know-about-medical-identity-theft> (last visited Oct. 2, 2023).

<sup>6</sup> *Id.*

- 1 Therefore, its failure to do so is intentional, willful, reckless, and/or grossly negligent.
- 2 44. Defendant disregarded the rights of Plaintiffs by, inter alia, (i) intentionally, willfully,
- 3 recklessly, or negligently failing to take adequate and reasonable measures to ensure
- 4 that its network servers were protected against unauthorized intrusions; (ii) failing to
- 5 disclose that it did not have adequately robust security protocols and training
- 6 practices in place to adequately safeguard Plaintiffs' PII; (iii) failing to take standard
- 7 and reasonably available steps to prevent the Data Breach; (iv) concealing the
- 8 existence and/or extent of the Data Breach for an unreasonable duration of time; and
- 9 (v) failing to provide Plaintiff prompt and accurate notice of the Data Breach.
- 10 45. Plaintiffs have suffered lost time, annoyance, interference, and inconvenience as a
- 11 result of the Data Breach and have fear, stress, anxiety and increased concerns for the
- 12 loss of their privacy and PII being in the hands of criminals.
- 13 46. As a result of the Data Breach, Plaintiffs anticipate spending considerable time and
- 14 money on an ongoing basis to try to mitigate and address harms caused by the Data
- 15 Breach.
- 16 47. As a result of the Data Breach, Plaintiffs are at risk and will continue to be at increased
- 17 risk of identity theft and fraud for years to come.
- 18 48. Plaintiffs have a continuing interest in ensuring that their Private Information, which,
- 19 upon information and belief, remains backed up in Defendant's possession, is
- 20 protected and safeguarded from future breaches.

21 ***Defendant Fails to Comply with FTC Guidelines***

- 22 49. The Federal Trade Commission ("FTC") has promulgated numerous guides for
- 23 businesses which highlight the importance of implementing reasonable data security
- 24 practices.
- 25 50. FTC guidelines note that businesses should protect the personal customer information
- 26 that they keep; properly dispose of personal information that is no longer needed;
- 27 encrypt information stored on computer networks; understand their network's
- 28 vulnerabilities; and implement policies to correct any security problems.

51. The guidelines also recommend companies not maintain Private Information longer than is needed for authorization of a transaction; limit access to sensitive data; require complex passwords to be used on networks; use industry-tested methods for security; monitor for suspicious activity on the network; and verify that third-party service providers have implemented reasonable security measures. Further, it recommends businesses use an intrusion detection system to expose a breach as soon as it occurs; monitor all incoming traffic for activity indicating someone is attempting to hack the system; watch for large amounts of data being transmitted from the system; and have a response plan ready in the event of a breach.<sup>7</sup>

52. The FTC guidelines also form part of the basis of Defendant's duty in this regard.

53. Upon information and belief, Defendant was at all times fully aware of its obligation to protect the PII of its customers, Defendant was also aware of the significant repercussions that would result from its failure to do so. Accordingly, Defendant's conduct was particularly unreasonable given the nature and amount of PII it obtained and stored and the foreseeable consequences of the immense damages that would result to Plaintiffs.

***Injuries and Damages:***

54. As a result of the Data Breach, Plaintiffs have all sustained actual injuries and damages, including: (i) lost or diminished value of their PII; (ii) lost opportunity costs associated with attempting to mitigate the actual consequences of the Data Breach, including but not limited to lost time; (iii) lost time spent on activities remedying harms resulting from the Data Breach; (iv) invasion of privacy; (v) loss of benefit of the bargain; (vi) the continued and certainly increased risk to their PII; and (vii) fear, stress, and anxiety.

55. The information disclosed in this Data Breach is impossible to change. Plaintiffs will have to monitor for identity theft and breaches their entire lives. The retail cost of

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<sup>7</sup> Protecting Personal Information: A Guide for Business, Federal Trade Commission (2016). Available at [https://www.ftc.gov/system/files/documents/plain-language/pdf-0136\\_proteting-personal-information.pdf](https://www.ftc.gov/system/files/documents/plain-language/pdf-0136_proteting-personal-information.pdf) (last visited Oct. 2, 2023).

credit monitoring and identity theft monitoring can cost around \$200 a year per Plaintiff. This is a reasonable and necessary cost to monitor to protect Plaintiffs from the risk of identity theft that arose from the Data Breach. This is a future cost that Plaintiffs would not need to bear but for Defendant's failure to safeguard their PII.

### **CLAIMS FOR RELIEF:**

#### **COUNT I: Illinois Genetic Information Privacy Act (On behalf of all Plaintiffs).**

56. Plaintiffs re-plead and incorporate by reference all prior paragraphs of this complaint.

57. The Genetic Information Privacy Act (GIPA), 410 Ill. Comp. Stat. Ann. 513 *et seq.*, covers "[c]onfidentiality of genetic information" and provides in relevant part: "Except as otherwise provided in this Act, genetic testing and information derived from genetic testing is confidential and privileged and may be released only to the individual tested and to persons specifically authorized, in writing in accordance with Section 30, by that individual to receive the information." 410 Ill. Comp. Stat. Ann. 513/15(a).

58. GIPA incorporates the definition of "genetic information" from 45 C.F.R. § 160.103, which defines the term as "information about" an individual's "genetic tests," "[t]he genetic tests of family members of the individual," "[t]he manifestation of a disease or disorder in family members of such individual," or "[a]ny request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by the individual or any family member of the individual."

59. GIPA also incorporates the definition of "genetic test" from 45 C.F.R. § 160.103, which defines the term as "an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, if the analysis detects genotypes, mutations, or chromosomal changes."

60. The test performed by 23andMe qualifies as "genetic testing" under GIPA because it detects, inter alia, genotypes and mutations.

61. The information compromised in the breach of 23andMe's platform included genetic information, genetic testing, and information derived from such information. For

example, the origin of Plaintiffs' ancestors, the list of other 23andMe users identified by 23andMe as Plaintiff's DNA relatives, and the information on the number of DNA segments Plaintiffs shared with those other users were all information about, and derived from, the 23andMe genetic test Plaintiff purchased. Moreover, these results serve as a receipt of genetic services performed by 23andMe for Plaintiff.

62. 23andMe negligently and recklessly released Plaintiff and class members' genetic information, PII, and other confidential and highly sensitive PII by failing to adequately safeguard that information from malicious actors. Considering the number of data breaches and the sensitivity of the information it possessed, 23andMe was aware or should have been aware of the need to implement robust security measures to protect such information. It consciously refused to do so.

63. By negligently and recklessly releasing Plaintiffs' information (including genetic testing and information derived from genetic testing performed by 23andMe) to unauthorized parties, as alleged above, 23andMe violated GIPA.

64. Accordingly, Plaintiffs are entitled to, and seek, damages of "\$2,500 or actual damages, whichever is greater," for each negligent violation, or "\$15,000 or actual damages, whichever is greater," for each intentional or reckless violation, as well as reasonable attorney's fees and costs. 410 Ill. Comp. Stat. Ann. 513/40.

65. Plaintiffs are also authorized to obtain injunctive relief to prevent future violations.  
*Id.*

## **COUNT II: Negligence (On behalf of all Plaintiffs).**

66. Plaintiffs re-plead and incorporate by reference all prior paragraphs of this complaint.

67. At all times herein relevant, Defendant owed Plaintiffs a duty of care, *inter alia*, to act with reasonable care to secure and safeguard their PII and to use commercially reasonable methods to do so. Defendant took on this obligation upon accepting and storing the PII of Plaintiffs in its computer systems and on its networks.

68. Defendant knew that the PII was private and confidential and should be protected

1 and, thus, Defendant owed a duty of care not to subject Plaintiffs to an unreasonable  
2 risk of harm because they were foreseeable and probable victims of any inadequate  
3 security practices.

4 69. Defendant knew, or should have known, of the risks inherent in collecting and storing  
5 PII, the vulnerabilities of its data security systems, and the importance of adequate  
6 security.

7 70. Defendant knew, or should have known, that its data systems and networks did not  
8 adequately safeguard Plaintiffs' PII.

9 71. Only Defendant was in the position to ensure that its systems and protocols were  
10 sufficient to protect the PII that Plaintiffs had entrusted to it.

11 72. Because Defendant knew that a breach of its systems could damage thousands of  
12 individuals, including Plaintiffs, Defendant had a duty to adequately protect its data  
13 systems and the PII contained therein.

14 73. Plaintiffs' willingness to entrust Defendant with their PII was predicated on the  
15 understanding that Defendant would take adequate security precautions.

16 74. Moreover, only Defendant had the ability to protect its systems and the PII stored on  
17 them from attack.

18 75. Defendant also had independent duties under state laws that required Defendant to  
19 reasonably safeguard Plaintiffs' PII and promptly notify them about the Data Breach.  
20 These "independent duties" are untethered to any contract between Defendant and  
21 Plaintiffs.

22 76. Defendant breached its general duty of care to Plaintiffs in, but not necessarily limited  
23 to, the following ways:

24 a) By failing to exercise reasonable care in obtaining, retaining, securing,  
25 safeguarding, deleting, and protecting the PII in its possession;

26 b) By failing to protect Plaintiffs' PII using reasonable and adequate  
27 security procedures and systems that were/are compliant with FTC  
28 guidelines and industry-standard practices.

- 1 c) By failing to implement processes to detect the Data Breach, security  
2 incidents or intrusions,
- 3 d) By failing to quickly and to timely act on warnings about data breaches;
- 4 e) By failing to timely and promptly notify Plaintiff of any data breach,  
5 security incident, or intrusion that affected or may have affected their  
6 PII; and
- 7 f) By failing to provide adequate supervision and oversight of the PII with  
8 which it was and is entrusted, in spite of the known risk and foreseeable  
9 likelihood of breach and misuse.
- 10 77. Defendant's willful failure to abide by these duties was wrongful, reckless, and  
11 grossly negligent in light of the foreseeable risks and known threats.
- 12 78. To date, Defendant has not provided sufficient information to Plaintiffs regarding the  
13 extent of the unauthorized access and continues to breach its disclosure obligations  
14 to Plaintiffs.
- 15 79. Further, through its failure to provide clear notification of the Data Breach to  
16 Plaintiffs, Defendant prevented Plaintiffs from taking meaningful, proactive steps to  
17 secure their PII.
- 18 80. There is a close causal connection between Defendant's failure to implement security  
19 measures to protect the PII of Plaintiffs and the harm suffered, or risk of imminent  
20 harm suffered, by Plaintiffs.
- 21 81. Defendant's wrongful actions, inactions, and omissions constituted, and continue to  
22 constitute, common law negligence.
- 23 82. As a direct and proximate result of Defendant's negligence and negligence per se,  
24 Plaintiffs have suffered and will suffer injury, including but not limited to:
- 25 a) actual identity theft;
- 26 b) the loss of the opportunity of how their PII is used;
- 27 c) the compromise, publication, and/or theft of their PII;
- 28 d) out-of-pocket expenses associated with the prevention, detection, and

recovery from identity theft, tax fraud, and/or unauthorized use of their PII;

e) lost opportunity costs associated with effort expended and the loss of productivity addressing and attempting to mitigate the actual and future consequences of the Data Breach, including but not limited to, efforts spent researching how to prevent, detect, contest, and recover from embarrassment and identity theft;

f) the continued risk to their PII, which may remain in Defendant's possession and is subject to further unauthorized disclosures so long as Defendant fails to undertake appropriate and adequate measures to protect Plaintiffs' PII in its continued possession; and

g) future costs in terms of time, effort, and money that will be expended to prevent, detect, contest, and repair the impact of the PII compromised as a result of the Data Breach for the remainder of the lives of Plaintiffs.

83. As a direct and proximate result of Defendant's negligence and negligence per se, Plaintiffs have suffered and will continue to suffer other forms of injury and/or harm, including, but not limited to, anxiety, emotional distress, loss of privacy, and other economic and non-economic losses.

**COUNT III: BREACH OF ACTUAL AND IMPLIED CONTRACT** (On behalf of all Plaintiffs)

84. Plaintiffs re-plead and incorporate by reference all prior paragraphs of this complaint.

85. Defendant specifically advertised a feature of the service they offer is privacy and security.

86. Plaintiffs believed their PII would be stored and remain private and secure as a condition of purchasing Defendant's services. In so doing, Plaintiffs entered into actual and implied contracts with Defendant by which Defendant agreed to safeguard and protect such information, to keep such information secure and confidential, and



1 to timely and accurately notify Plaintiffs if their data had been breached and  
2 compromised or stolen.

3 87. At the time Defendant acquired the PII of Plaintiffs, there was a meeting of the minds  
4 and a mutual understanding that Defendant would safeguard the PII and not take  
5 unjustified risks when storing the PII.

6 88. Implicit in the agreements between Plaintiffs and Defendant to provide PII, was the  
7 Defendant's obligation to: (a) use such PII for business purposes only, (b) take  
8 reasonable steps to safeguard that PII, (c) prevent unauthorized disclosures of the PII,  
9 (d) retain the PII only under conditions that kept such information secure and  
10 confidential, and (e) provide Plaintiffs with prompt and sufficient notice of any and  
11 all unauthorized access and/or theft of their PII.

12 89. Plaintiffs fully performed their obligations under the actual and implied contracts  
13 with Defendant.

14 90. Defendant breached the actual and implied contracts they made with Plaintiffs by  
15 failing to safeguard and protect their personal information, by failing to delete the  
16 information that it no longer needed, and by failing to provide timely and accurate  
17 notice to them that personal information was compromised as a result of the Data  
18 Breach.

19 91. As a direct and proximate result of Defendant's above-described breach of actual and  
20 implied contract, Plaintiffs have suffered, and will continue to suffer, ongoing,  
21 imminent, and impending threat of identity theft crimes, fraud, and abuse; actual  
22 identity theft crimes, fraud, and abuse; loss of the confidentiality of the stolen  
23 confidential data; the illegal sale of the compromised data on the dark web; expenses  
24 and/or time spent on credit monitoring and identity theft insurance; time spent  
25 scrutinizing bank statements, credit card statements, and credit reports; expenses  
26 and/or time spent initiating fraud alerts, decreased credit scores and ratings; lost work  
27 time; fear, stress, and anxiety; and other economic and non-economic harm.

28 92. As a direct and proximate result of Defendant's above-described breach of actual and

1 implied contract, Plaintiffs are entitled to recover actual, consequential, and nominal  
 2 damages to be determined at trial.

3 **COUNT IV: INVASION OF PRIVACY – INTRUSION UPON SECLUSION** (On  
 4 behalf of all Plaintiffs)

5 93. Plaintiffs re-plead and incorporate by reference all prior paragraphs of this complaint.

6 94. Plaintiffs have a legally protected privacy interest in their PII, which is and was  
 7 collected, stored and maintained by Defendant, and they are entitled to the reasonable  
 8 and adequate protection of their PII against foreseeable unauthorized access, as  
 9 occurred with the Data Breach.

10 95. Plaintiffs reasonably expected that Defendant would protect and secure their PII from  
 11 unauthorized parties and that their PII would not be accessed, removed, and/or  
 12 disclosed to any unauthorized parties or for any improper purpose.

13 96. Defendant intentionally intruded into Plaintiffs' seclusion by disclosing without  
 14 permission their PII to a third party. Defendant's acts and omissions giving rise to the  
 15 Data Breach were intentional in that the decisions to implement lax security and  
 16 failure to timely notice Plaintiffs were undertaking willfully and intentionally.

17 97. By failing to keep Plaintiffs' PII secure, and disclosing PII to unauthorized parties for  
 18 unauthorized use, Defendants unlawfully invaded Plaintiffs' privacy right to  
 19 seclusion by, inter alia:

- 20 a) invading their privacy by improperly using their PII obtained for a specific purpose
- 21 for another purpose, or disclosing it to unauthorized persons;
- 22 b) failing to adequately secure their PII from disclosure to unauthorized persons; and
- 23 c) enabling the disclosure of their PII without consent.

24 98. This invasion of privacy resulted from Defendant's intentional failure to properly  
 25 secure and maintain Plaintiffs' PII, leading to the foreseeable unauthorized access,  
 26 removal, and disclosure of this unguarded and private data.

27 99. Plaintiffs' PII is the type of sensitive, personal information that one normally expects  
 28 will be protected from exposure by the very entity charged with safeguarding it.

Further, the public has no legitimate concern in Plaintiffs' PII, and such information is otherwise protected from exposure to the public by various statutes, regulations and other laws.

100. The disclosure of Plaintiffs' PII to unauthorized parties is substantial and unreasonable enough to be legally cognizable and is highly offensive to a reasonable person.

101. Defendant's willful and reckless conduct that permitted unauthorized access, removal, and disclosure of Plaintiffs' sensitive PII is such that it would cause serious mental injury, shame or humiliation to people of ordinary sensibilities.

102. The unauthorized access, removal, and disclosure of Plaintiffs' PII was without their consent, and in violation of various statutes, regulations, and other laws.

103. As a direct and proximate result of Defendant's intrusion upon seclusion, Plaintiffs suffered injury and sustained actual losses and damages as alleged herein.

104. Plaintiffs alternatively seek an award of nominal damages.

**COUNT V: UNJUST ENRICHMENT** (On behalf of Plaintiffs)

105. Plaintiffs re-plead and incorporate by reference all prior paragraphs of this complaint.

106. By its wrongful acts and omissions described herein, Defendant has obtained a benefit by unduly taking advantage of Plaintiffs.

107. Defendant, prior to and at the time Plaintiffs entrusted their PII to Defendant, caused Plaintiffs to reasonably believe that Defendant would keep such PII secure.

108. Defendant was aware, or should have been aware, that reasonable consumers would want their PII secured and would not have contracted with Defendant, directly or indirectly, had they known that Defendant's information systems were substandard for that purpose.

109. Defendant was also aware that, if the substandard condition of and vulnerabilities in its information systems were disclosed, it would negatively affect Plaintiffs' decisions to seek services from Defendant.

110. Defendant failed to disclose facts pertaining to its substandard information systems, defects, and vulnerabilities therein before Plaintiffs made their decisions to make purchases, engage in commerce therewith, and seek services or information.

111. Defendant denied Plaintiffs the ability to make an informed purchasing decision and took undue advantage of Plaintiffs.

112. Defendant was unjustly enriched at the expense of Plaintiffs, as Defendant received profits, benefits, and compensation, in part, at the expense of Plaintiffs; however, Plaintiffs did not receive the benefit of their bargain because they paid for services that did not satisfy the purposes for which they bought/sought them.

113. Since Defendant's profits, benefits, and other compensation were obtained improperly, Defendant is not legally or equitably entitled to retain any of the benefits, compensation, or profits it realized from these transactions.

114. Plaintiffs seek an Order of this Court requiring Defendant to refund, disgorge, and pay as restitution any profits, benefits, and other compensation obtained by Defendant from its wrongful conduct and/or the establishment of a constructive trust from which Plaintiffs may seek restitution.

#### **PRAYER:**

Wherefore, Plaintiffs request that this Court award damages and provide relief as follows:

- A. Pursuant to the Illinois Genetic Information Privacy Act, damages of \$2,500 or actual damages, whichever is greater, for each negligent violation, or \$15,000 or actual damages, whichever is greater, for each intentional or reckless violation, as well as reasonable attorney's fees and costs. 410 Ill. Comp. Stat. Ann. 513/40.
- B. For for all other compensatory damages, statutory damages, punitive damages, restitution, and/or recovery of such relief as permitted by law in kind and amount;
- C. For equitable relief enjoining Defendant from engaging in the wrongful conduct complained of herein pertaining to the misuse and/or disclosure of Plaintiffs' PII,

1 and from refusing to issue prompt, complete, and accurate disclosures to Plaintiffs;

2 D. For injunctive relief requested by Plaintiff, including but not limited to:

- 3 i. prohibiting Defendant from engaging in the wrongful and unlawful acts  
4 described herein;
- 5 ii. requiring Defendant to protect, including through encryption, all data  
6 collected through the course of business;
- 7 iii. requiring Defendant to delete and purge the PII of Plaintiffs unless Defendant  
8 can provide to the Court reasonable justification for the retention and use of  
9 such information when weighed against the privacy interests of Plaintiffs;
- 10 iv. requiring Defendant to implement and maintain a comprehensive security  
11 program designed to protect the confidentiality and integrity of Plaintiffs'  
12 PII;
- 13 v. requiring Defendant to engage independent third-party security auditors and  
14 internal personnel to run automated security monitoring, simulated attacks,  
15 penetration tests, and audits on Defendant's systems periodically;
- 16 vi. prohibiting Defendant from maintaining Plaintiffs' PII on a cloud-based  
17 database;
- 18 vii. requiring Defendant to segment data by creating firewalls and access  
19 controls so that, if one area of Defendant's network is compromised, hackers  
20 cannot gain access to other portions of Defendant's systems;
- 21 viii. requiring Defendant to conduct regular database scanning and securing  
22 checks;
- 23 ix. requiring Defendant to establish an information security training program for  
24 all employees, with additional training for employees' responsible for  
25 handling PII;
- 26 x. requiring Defendant to implement a system of tests to assess its respective  
27 employees' knowledge of the education programs discussed in the preceding  
28 subparagraphs, as well as randomly and periodically testing employees'

1 compliance with Defendant's policies, programs, and systems for protecting  
2 PII;

3 xi. requiring Defendant to implement, maintain, review, and revise as necessary  
4 a threat management program to monitor Defendant's networks for internal  
5 and external threats appropriately, and assess whether monitoring tools are  
6 properly configured, tested, and updated; and

7 xii. requiring Defendant to meaningfully educate Plaintiffs about the threats they  
8 face due to the loss of their confidential PII to third parties, as well as the  
9 steps affected individuals must take to protect themselves;

10 E. for pre- and post-judgment interest on all amounts awarded, at the prevailing legal  
11 rate;

12 F. for an award of attorney's fees, costs, and litigation expenses; and

13 G. for all other Orders, findings, and determinations identified and sought in this  
14 Complaint.

15  
16 **JURY DEMAND**

17 Plaintiffs hereby demand a trial by jury for all issues triable by jury.

18  
19 Dated: September 25, 2024

POTTER HANDY LLP

20 By: 

21 Tehniat Zaman, Esq.  
22 Attorney for Plaintiffs  
23  
24  
25  
26  
27  
28

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 Mark Potter, Esq., SBN 166317  
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 Attorneys for Plaintiffs

**COMPLAINT: Attachment 1**

Antoinette Powell, (See additional parties list with plaintiffs attached) v. 23ANDME, INC.,

1. Carolyn Ann Shnyder	IL	28. Douglas Terry	IL
2. Denise Jackson	IL	29. Angel Derry	IL
3. Zia Varajon	IL	30. Beverly Gant-Garrott	IL
4. Brooke Kuempel	IL	31. Eric Strom	IL
5. Fred Perlmutter	IL	32. Yesenia Buenrostro	IL
6. Brittany Williams	IL	33. Andrey Wilson	IL
7. Dina Gussie	IL	34. Daniel Gonzalez	IL
8. Adrian Delgado	IL	35. Cynthia Elliott	IL
9. Alan Teller	IL	36. Amy Buwick	IL
10. Brianna Coleman	IL	37. Anna Gutin	IL
11. Alisha Akers	IL	38. Anna Easter	IL
12. Cruz Rodriguez	IL	39. Ashley Czernecki	IL
13. Daniel Burr	IL	40. Briana Ross	IL
14. Ashley Delano	IL	41. David Carranza	IL
15. Denise Kocielko	IL	42. Billy Moller	IL
16. Alisha Uysaloglu	IL	43. Amanda Light	IL
17. Daniel Brosnan	IL	44. Aaron Ruebling	IL
18. Amaro Julian	IL	45. April Schermann	IL
19. Wesley Hentges	IL	46. Carrie Nehmelman	IL
20. Volodymyr Ivanov	IL	47. Abby Sosonkin	IL
21. Eileen Lacy	IL	48. Amanda Gordon-	
22. Yvonne Tucker	IL	Sandberg	IL
23. Alexander Johnson	IL	49. Froylan Barrera	IL
24. Bailee Wallace	IL	50. Alyssa Harrison	IL
25. David Newcom	IL	51. Wanda Elrod	IL
26. Elizabeth Reyes	IL	52. Andrea Catarivas	IL
27. Amy Middleton	IL	53. Brittani Hayes	IL

54. Dolores Johnsen	IL	99. Adrian Esquivel	IL
55. David Haffey	IL	100. Amanda Tsang	IL
56. Bailey Sablock	IL	101. wanda walker	IL
57. Abby Watson	IL	102. Darcie Garza	IL
58. Dan Holloway	IL	103. Cassidy Dellorto-Blackwell	IL
59. Diane Bubeck	IL	104. William Homes	IL
60. Zach Roa	IL	105. Dawn Ganassin	IL
61. Emily Davidson	IL	106. Deborah Strzok	IL
62. Abran Keranen	IL	107. Emily Roberts	IL
63. Frank Dickerson	IL	108. Cliffie King	IL
64. Amy Welge	IL	109. Christina Sherbrook	IL
65. Don Phelps	IL	110. Bridget Patrick	IL
66. Yazan Farhud	IL	111. Caitlin Linehan	IL
67. Bich Plant	IL	112. Courtney Johnson	IL
68. Amanda Bunday	IL	113. Finley Cowlshaw	IL
69. Amber Irish	IL	114. Anne Hoeksema	IL
70. Aja Mister	IL	115. Cinnamon Cooper	IL
71. Bria Berger	IL	116. Elizabeth Elswick	IL
72. Armando Arrieta	IL	117. Dimetrios Beasley	IL
73. Albert Rangel	IL	118. Darryl Callum	IL
74. Angela Hess	IL	119. Allison Dertz	IL
75. Earl Daniels	IL	120. Danita Pope	IL
76. Annete Johnson	IL	121. Brandy Curnutt-Joiner	IL
77. Ericka Pennell	IL	122. David Kraft	IL
78. Cameron Watts	IL	123. Clare Sorace	IL
79. Andre Jones	IL	124. David Brown	IL
80. Derek Reynolds	IL	125. Christy Flynn	IL
81. Amber Kunz	IL	126. Douglas Harris	IL
82. Christina Villalobos-Young	IL	127. April Mottram	IL
83. Carmen English	IL	128. Erika Barney	IL
84. Carol Humble	IL	129. Aimee Erbaugh	IL
85. Devon Merritt	IL	130. Akilia Lesure	IL
86. Denise Nardoni	IL	131. Athenaliza Tomon	IL
87. Adeline Epstein	IL	132. Aleszandria Lahmon	IL
88. Amanda Macias	IL	133. Colleen Nichols	IL
89. Emily Sadowski	IL	134. Anthony Donovan	IL
90. Andrea Waldron	IL	135. Donovan Day	IL
91. Ernesto X Muniz Eisele	IL	136. Amie Thomas	IL
92. Don Pokorny	IL	137. Anthony Guarino	IL
93. Dan Easter	IL	138. Brianna Williams	IL
94. William Legge	IL	139. Alejandro Hutchinson	IL
95. Walker Vreeland	IL	140. Cornell Lewis	IL
96. Angeline Jamrocha	IL	141. Christopher Guida	IL
97. Brian Barajas	IL	142. Alexis Smith	IL
98. Diana Gordon	IL	143. Angel Walker	IL



144 Clay Stacy	IL	189 Constantina Koustenis	IL
145 Abigail Gunn	IL	190 Aldair Arriola Gomez	IL
146 Amber lafollo	IL	191 Debbie Greene	IL
147 Catherine Blythe	IL	192 Dan Rickard	IL
148 Cleotis Johnson	IL	193 Cheryl McNany	IL
149 Arya Pourtabatabaie	IL	194 Boetius Turek	IL
150 Christina Reeves	IL	195 Jeri Marks	IL
151 Craig Scott	IL	196 Jeffery Wilson	IL
152 Daniel Baus	IL	197 Andrea Winland	IL
153 Adam Ibrahim	IL	198 Jamal Robinson	IL
154 Alexandra Camp	IL	199 Chloe Lawler	IL
155 Catherine Clark	IL	200 Casey Nunes	IL
156 Brittany Rathbun	IL	201 Byung Jin Lee	IL
157 Daniel Harrell	IL	202 Angel Pacheco	IL
158 Walter Balke	IL	203 Chacarah Mercer	IL
159 Demitrios Petsas	IL	204 Kim Evans	IL
160 Carmen Williams	IL	205 Alexandra Gross	IL
161 Debra Watkins	IL	206 Brandon Scrivner	IL
162 Eitan Bernstein	IL	207 Caitlin Kadell	IL
163 Edwin Mendez	IL	208 Dustin Brown	IL
164 Derek Henson	IL	209 Heather Barker	IL
165 Angela Mance	IL	210 Gena Rogers	IL
166 Christopher Cimaglia	IL	211 Donna Prince	IL
167 Dan Watson	IL	212 Elizabeth Duncan	IL
168 Elaine Crossman	IL	213 Keith Wideman	IL
169 Brandon Drummond	IL	214 Karla Garcia	IL
170 Cheryl Marsh	IL	215 Debbie Duel	IL
171 Dennis Peterson	IL	216 Benjamin White	IL
172 Carl Novakovich	IL	217 Hashim Ali	IL
173 Erica Tilley	IL	218 Brian Cotten	IL
174 Christy Boyd	IL	219 Karen Junge	IL
175 Candace Sharp	IL	220 Denni Russell	IL
176 Christina Burns	IL	221 Lisa Schaedler	IL
177 Brandon Rentmeester	IL	222 Gracy Kushner	IL
178 Dylan Janecek	IL	223 Kylie Cocallas	IL
179 Dillon Gilbow	IL	224 Katrina Davia	IL
180 Chris Boone	IL	225 Laura Bendorf	IL
181 Dannielle Koehler	IL	226 Klaudia Smykowska	IL
182 Bernice Donohue	IL	227 Elizabeth Yeager	IL
183 Amy Eichwedel	IL	228 John Molenstra	IL
184 Frieda LaFever	IL	229 Jack Wilson	IL
185 Emre Gumuluoglu	IL	230 Jeff Satterwhite	IL
186 Ewelina Jedrzejewska	IL	231 Deborah Sanders	IL
187 Donald Searcy	IL	232 Zachary Winter	IL
188 Elyse Widtmann	IL	233 Wayne Coleman	IL

234 George Mitchell IL  
 235 Cara Crosse IL  
 236 Isabella Weiss IL  
 237 Austin Boudreaux IL  
 238 Craig Gass IL  
 239 Kaleena Robinson IL  
 240 Candy Deaville IL  
 241 Julie Lindsey IL  
 242 Christopher Dumelle IL  
 243 Jake Burgess IL  
 244 Kendall Rodheim IL  
 245 Christine Borovoy IL  
 246 Andrea Brown IL  
 247 Jessica Robinson IL  
 248 Anne Marie Fish IL  
 249 Anthony Wilcox IL  
 250 Viridiana Gonzalez IL  
 251 Ashli Blankenship IL  
 252 Irineo Bolusan IL  
 253 Elliette Goulding IL  
 254 Cheryl Phillips IL  
 255 Adam Putman IL  
 256 Cheryl Poniatowski IL  
 257 Brian Skoog IL  
 258 Hannah Bestler IL  
 259 David Preece IL  
 260 Jennifer Wesolowski IL  
 261 Julia Danecker IL  
 262 Diana McAleenan IL  
 263 David Nelson IL  
 264 Julia Brozek IL  
 265 Carl Zajac IL  
 266 Kiley Pfeifer IL  
 267 Adam Horn IL  
 268 Lester Williams IL  
 269 Elliott Gordon IL  
 270 Jennifer Sellers IL  
 271 Charles Martin IL  
 272 Garland Garner IL  
 273 Lindsey Brooks IL  
 274 Diane Aviles IL  
 275 Gretchen Vogt IL  
 276 George Lane IL  
 277 Corina Fregoso IL  
 278 William Sieber IL

279 Brett Roberts IL  
 280 Zaynab Abdullah IL  
 281 Xaviea Moore IL  
 282 Alyssa Kinnaird IL  
 283 Linda Vecchiollo IL  
 284 Amanda Peters IL  
 285 Camille Sanchez IL  
 286 Eddie Enriquez IL  
 287 Amanda Grzetic IL  
 288 Adam Leggett IL  
 289 William Watkins IL  
 290 Dominique Echols IL  
 291 Brandon Watts IL  
 292 Crystal Tejkowski IL  
 293 Jason Vigdal IL  
 294 Gina Mirabelli IL  
 295 Jolene Stecken IL  
 296 Arthur Hawkins IL  
 297 David Schultz IL  
 298 Connie Kravitz IL  
 299 Emma Schmidt IL  
 300 Julia Skeggs IL  
 301 Jamie Burke IL  
 302 Heather Welter IL  
 303 Anthony Flesch IL  
 304 Lena Alexandersson IL  
 305 Jessica Larsen IL  
 306 Aliss Calzonzi IL  
 307 Alexander McDonald IL  
 308 Lorel Root IL  
 309 Annette Miller IL  
 310 Kristin McGuire IL  
 311 Krista Espinoza IL  
 312 Yulanda Curtis IL  
 313 Christopher Mottram IL  
 314 Zeke Hayes IL  
 315 William Buehler IL  
 316 Wendy Keller IL  
 317 Yolanda Thomas IL  
 318 W Stephen Minore IL  
 319 Lorri Kenny IL  
 320 Yasshira Lopez IL  
 321 William Pfeiffer IL  
 322 vanessa lacey IL  
 323 Jeremy Shermak IL

324	Martin Smith	IL
325	MaryBeth McCarter	IL
326	William Mckenzie	IL
327	Thelma Smith-McKeever	IL
328	Marshall Kravitz	IL
329	Wesley Sweger	IL
330	William Crossman	IL
331	Timothy Bruess	IL
332	Nicole Guzma	IL
333	Willis Weinstein	IL
334	Yolanda Marshall	IL
335	Yusuf Begic	IL
336	William Lester	IL
337	Virginia Moreno	IL
338	Virginia Vittori	IL
339	Michelle Collet	IL
340	Montrell Smith	IL
341	William Nelson	IL
342	Yang Tang	IL
343	Zakeya Michael	IL
344	Scott Ross	IL
345	Summer Gibson	IL
346	Wesley Gordon	IL
347	Melissa Marquardt	IL
348	Wasiq Nafees	IL
349	Yesenia Del Toro	IL
350	Meridith Gin	IL